

**Notice of Allowability**

Application No.

09/830,972

Examiner

DANIEL KOLKER

Applicant(s)

SCHWAB ET AL.

Art Unit

1649

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 1/30/09.
2. ☒ The allowed claim(s) is/are 127-132 and 147-151.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of the:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.  
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached  
1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.  
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 10/4/06, 11/29/06
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 20090409.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

/Daniel E. Kolker/  
Primary Examiner, Art Unit 1649  
April 9, 2009

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### EXAMINER'S AMENDMENT

1. The remarks and amendments filed 23 October 2008 and 30 January 2009 have been entered. Claims 127 - 132 and 147 - 151 are pending and under examination.

### *Election/Restrictions*

2. In the restriction requirement mailed 28 August 2003, the examiner had set forth a restriction between nucleic acid sequences encoding SEQ ID NO:2 and 29. These had been set forth as groups 5 and 6 respectively. Throughout prosecution, claims to nucleic acids encoding SEQ ID NO:2 and 29 had been examined. The claims as currently written encompass nucleic acids encoding either SEQ ID NO:2 or 29 (see for example claim 128). The examiner considers that the nucleic acids encoding SEQ ID NO:2 and SEQ ID NO:29 are not patentably distinct. Therefore, the restriction requirement between groups 5 and 6 is hereby withdrawn.

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Amy DeCloux on 9 April 2009.

4. In the claims:

In claim 127, line 3 delete the phrase "nucleotide coding sequence which encodes" and replace with -- a sequence complementary to a nucleic acid sequence which encodes ---

Claim 128 has been re-written as follows:

-- An expression vector comprising a nucleotide sequence which encodes a protein comprising an amino acid sequence selected from the group consisting of:

- i) the polypeptide of SEQ ID NO:2,
- ii) amino acids 1 - 171 fused to amino acids 975-1163 of SEQ ID NO:2, and
- iii) the polypeptide of SEQ ID NO:29. ---

In claim 151, delete the word "method" and replace with -- nucleic acid ---

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***Status of Claims***

5. Claims 127 - 132 and 147 - 151 are allowed.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL KOLKER whose telephone number is (571)272-3181. The examiner can normally be reached on Mon - Fri 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Stucker can be reached on (571) 272-0911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Daniel E. Kolker/

Primary Examiner, Art Unit 1649

April 9, 2009